

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
Board OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 29-92:

GEYSER EDUCATION ASSOCIATION,
MEA/NEA,

Complainant,

vs.

GEYSER PUBLIC SCHOOL DISTRICT
NO. 58,

Defendant.

FINDINGS OF FACT;
CONCLUSIONS OF LAW;
RECOMMENDED ORDER

* * * * *

I. INTRODUCTION

On April 24, 1992 the Geyser Education Association (complainant) filed an Unfair Labor Practice Charge against the Geyser Public School District No. 58 (defendant) alleging the violation of Section 39-31-401(1)(3) MCA. The charge indicated that by selectively implementing a reduction in force not motivated by legitimate and substantial business reasons, but by discrimination of members of the Association, the defendant committed a violation of Section 39-31-401 (1) and (3) MCA. The defendant denied violations of the law cited. An investigation report determination issued by the Board on May 26, 1992 found sufficient factual and legal issues to warrant a finding of probable merit and referral to an evidentiary hearing.

A hearing was held in Stanford, Montana before Joseph V. Maronick on August 21, 1992. Parties present, duly sworn, and offering testimony were Vicky A. Blunn, Louis C. Feicht, Charles M. Nau, and Fern Keiser. The defendant was represented by James A.

1 Hubble, County Attorney, and the complainant by Richard Larson,
2 Attorney at Law.

3 Documents admitted to the record were claimant (petitioner)
4 Exhibits A, B, and C. Exhibit B, a grievance filed by several unit
5 members on November 19, 1992 and Exhibit C, a response to the
6 Exhibit B grievance, were admitted over the objection of the
7 defendant who questioned the document's relevancy and noted they
8 were not included in the complainant's proposed exhibit list. The
9 documents were found relevant and, as part of the defendant's
10 business record, not a surprise to them.

11 II. FINDINGS OF FACT

12 1. On April 24, 1991, the Geyser Education Association (the
13 unit) filed an unfair labor practice charge which indicated:

14 The Association believes the Board of Trustees
15 has violated 39-31-401 subsection 1 and 3 MCA
16 by selectively implementing reduction in
17 force, nonrenewal and termination of Charles
18 Nau, Annette Gray, and Louis Peicht. These
19 actions were not motivated by legitimate and
substantial business reasons, but by
discrimination of members of the Association.
These activities are inherently destructive of
the right of self-organization.

20 2. When a unit was being discussed, prospective unit members
21 discovered a majority wished to belong to the proposed association.
22 The School Board was aware to some extent that the unit members had
23 agreed to form a unit. In error, the unit members did not realize
24 that an election needed to be held and the unit certified by the
25 Board of Personnel Appeals.

26 3. On November 19, 1992, (Exhibit B) several prospective
27 unit members filed a grievance with the School Board alleging a
28 change in the unit contract (Exhibit A). The School Board
superintendent responded (Exhibit C) to the grievance noting the

1 procedure being used was not in compliance with Board policy and,
2 in effect, advised the persons who filed the grievance that the
3 Geyser Education Association had not been officially recognized by
4 the School Board. Thereafter, the Association inquired regarding
5 appropriate steps needed for certification, took those steps and
6 the unit was certified by the Board of Personnel Appeals during one
7 of the last weeks of December, 1991.

8 Mr. Louis Feicht had talked with the superintendent about
9 extracurricular pay problems, the grievance subject matter,
10 without response. As a result, he and several others filed the
11 grievance according to the unit contract rather than the School
12 Board grievance policy. At the time the grievance was filed, the
13 unit had not yet been certified and, therefore, the unit contract
14 not in force.

15 4. The grievance was scheduled for School Board
16 consideration at the meeting immediately following its receipt and
17 the November 21, 1991 (Exhibit C) response. On the day of the
18 Board meeting the superintendent was advised by the parties who
19 signed the grievance that they did not wish to proceed with their
20 grievance. Thereafter no additional Board action, it appears, was
21 taken regarding the grievance. The Board did discuss the subject
22 matter raised by the persons who filed the grievance.

23 5. Ms. Annette Gray's contract was not renewed, in part,
24 because of some possible problems identified with her work
25 performance. She was not available to testify. Information
26 regarding her unit affiliation activities, specific work
27 performance, and the precise reason for contract non-renewal were
28 not offered.

1 6. Mr. Louis Feicht entered into an undescribed settlement
2 agreement with the School Board and particular information was not
3 offered by either party regarding his employment separation
4 identified as grieved in the unfair labor practice charge
5 complaint.

6 7. Charles Nau was an active member of the unit both in
7 developing and having the unit certified in late December 1991.
8 Mr. Nau was not certified in PE 1-12 but was in PE 1-8. He taught
9 accounting related courses, did not teach driver's education or
10 German, and is not sufficiently aware of computer use to use the
11 computer to assist students. In testimony, Mr. Nau indicated that
12 "he could not hold a candle to the knowledge of Mr. Feicht, he was
13 the computer teacher." (Hearing Tape 2 foot 434)

14 8. Contract settlement included a higher wage for the
15 teachers. In addition to pay increases, a boiler replacement
16 expense along with normal operating expense increases severally
17 strained the budget. Both the School Board and the complainant
18 Association realized that there would be a need to reduce the
19 teaching staff.

20 9. During negotiations Mr. Nau suggested several
21 alternatives which would or could be considered, regarding how work
22 load and staffing changes might be made by eliminating an English
23 teacher. In considering this possibility, the Board considered
24 both the number of students in classes and accreditation needs.
25 The analysis indicated Mr. Nau's position might be one to be cut.
26 If the English teacher was not rehired, there would be no German
27 teacher and one junior high and one freshman class which she taught
28 would need reassignment. Mr. Nau suggested that her duties be

1 transferred to another English teacher and that her art teaching be
2 taken care of at the junior high level. This English German
3 teacher also taught yearbook and school paper. These duties,
4 according to Mr. Nau, are extracurricular work, under the contract
5 treated differently for teachers' pay and, therefore, could be
6 given to another employee without problem.

7 10. The School Board considered several options in
8 determining which of the teachers should be released. Duplications
9 in the English and Social Studies positions were discussed by the
10 Board. The Board decided not to renew Mr. Nau's position because
11 they could use another Social Studies teacher for some of his
12 classes and the business classes taught by Mr. Nau could be more
13 appropriately taught through computer based class methodology for
14 both typing ability and accounting.

15 For accreditation the school needed a foreign language
16 taught. Because of the perceived need for speaking and vocal
17 interchange, in foreign language instruction, the Board did not
18 think a computer taught foreign language would be appropriate. The
19 business courses taught by Mr. Nau, the Board felt could be better
20 covered by non-teacher alternatives, i.e. computer taught courses.
21 The Board determined that the elimination of Mr. Nau's position
22 would be the least disruptive to the school and most importantly
23 would allow continued employment of the German English teacher.

24 11. Mr. Nau learned of his removal when other teachers
25 received their letter of intent for the coming school year and he
26 was not given one. Mr. Nau understood the reasons for removal but
27 did not anticipate his position would be the position which would
28 be cut.

1 12. Mr. Nau was not present at the Board meeting when the
2 staff reduction was discussed. He speculated that he could have
3 persuaded the Board to cut another position if he were present at
4 the meeting when the renewal of contracts was discussed. Although,
5 the contract renewal may have been on a published Board agenda, Mr.
6 Nau did not realize his position might be cut and so he did not
7 watch agenda items to determine if he should or should not attend
8 the Board meeting.

9 13. Several parties at the hearing discussed the negotiations
10 which occurred during the contract talks. Negotiations between the
11 Education Association and the School Board and contract settlement
12 discussions were described by varying witnesses as ugly - including
13 personal attacks, tenuous and marked by tension, not ugly or
14 personal and not too long, experienced some resistance and the
15 contract was not unreasonably long in time. One complainant
16 representative recalled a comment made during negotiations to the
17 effect that a defendant representative stated, according to that
18 witnesses recollection, "we would just as soon you (the
19 Association) would all leave."

20 III. DISCUSSION

21 The issue for determination in this case, based upon the
22 facts presented, is whether Mr. Nau's position's nonrenewal and
23 termination was motivated by a legitimate business reasons or by
24 discrimination of members of the appellant Association. The
25 reasoning offered by the defendant that Mr. Nau was chosen for
26 nonrenewal based on legitimate business reasons is found credible.
27 His work load was assignable to other employees or capable of being
28 completed through computer training programs. The other possible

1 reduction considered would have had a greater adverse impact on a
2 critical area - German - and so Mr. Nau's position was chosen.
3 There was perhaps one comment or several comments regarding union
4 or nonunion affiliation and what appeared to have been what would
5 have been normal negotiation process, conflict or positioning. The
6 record will not, however, support the charge that reductions were
7 made based upon discrimination of members of the Association. The
8 decision made to terminate Mr. Nau or the other named Association
9 members is not found in any way to have been based on
10 discrimination against the Association or its members.

11 **IV. RECOMMENDED ORDER**

12 It is ORDERED that Unfair Labor Practice Charge No. 29-92 be
13 dismissed.

14 **SPECIAL NOTE**

15 In according with Board Rule ARM 24.25.107(2), the ABOVE
16 RECOMMENDED ORDER shall become the FINAL ORDER of this Board unless
17 written exceptions are filed within twenty (20) days after service
18 of these FINDINGS OF FACT; CONCLUSIONS OF LAW; AND RECOMMENDED
19 ORDER upon the parties.

20 Entered and dated this 9 day of September, 1992.

21 BOARD OF PERSONNEL APPEALS

22
23 By

Joseph V. Maronick
Joseph V. Maronick
Hearing Examiner